IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.MC.No. 2600 of 2007()

CC.104/2002 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

.....

PETITIONER:

K.M.BASHEERUDDIN, S/O MUHAMMED,
KONTHATHKULAVAN VEETTIL, PULISSERI DESOM,
VANIYAMBALAM AMSOM, MALAPPURAM DISTRICT.

BY ADV. SRI.G.HARIHARAN
SRI.PRAVEEN HARIHARAN

RESPONDENTS:

---

1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
EDAVANNA POLICE STATION,
EDAVANNA, MALAPPURAM DISTRICT.

3. THIRUVALI SERVICE CO-OPERATIVE BANK LTD
NO.F 1403, THIRUVALI P.O.,
MALAPPURAM DISTRICT, PIN 673948.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 2600 OF 2007

Dated this the 16th day of August, 2007

ORDER

From the possession of the petitioner certain gold articles were recovered by the police in the course of investigation of a crime which has now resulted in C.C.No.104/02 before the learned Chief Judicial Magistrate, Manjeri. The petitioner made an application in 2003 for release of the said gold ornaments. By Annexure-4 order dated 5/5/03, that petition was dismissed.

2. According to the petitioner, the case has not made any headway thereafter. It has been transferred to the list of Long Pending Cases. According to the petitioner, he is now entitled to get release of the ornaments to his custody. Appropriate safeguards can be taken by the learned Magistrate, it is submitted.

3. Has the petitioner moved the learned Magistrate with

a fresh application for release of the articles under Sec.451 of the Cr.P.C. under the changed circumstances now? A period of four years has elapsed. There is a subsequent development that the case has already been transferred to the list of Long Pending Cases. The Supreme Court has now clarified the need to ensure that the articles are not kept in the custody of the court unnecessarily as explained in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638). I am certainly of opinion that it is for the petitioner, in these circumstances, to go before the learned Magistrate and make a fresh application for release of the ornaments in his favour under Sec.451 of the Cr.P.C. in the light of the changed circumstances. Without and before doing that, the petitioner has come to this Court unnecessarily.

4. This Crl.M.C. is, in these circumstances, dismissed; but with the observation that the petitioner's option to move the learned Magistrate shall remain unfettered. Needless to say, if such application is filed, the learned Magistrate must pass appropriate orders on merits expeditiously.

Sd/-

(R. BASANT, JUDGE)

Nan //true copy// P.S. to Judge